**MINUTES**
**of the**
**FIFTH MEETING**
**of the**
**REVENUE STABILIZATION AND TAX POLICY COMMITTEE**
**November 21-22, 2011**
**Room 307, State Capitol**
**Santa Fe**

The fifth meeting of the Revenue Stabilization and Tax Policy Committee (RSTP) for 2011 was called to order at 9:41 a.m. by Senator Tim Eichenberg, chair, on Monday, November 21, 2011, in Room 307 of the State Capitol in Santa Fe.

**Present**
Sen. Tim Eichenberg, Chair
Rep. Edward C. Sandoval, Vice Chair
Sen. Mark Boitano
Sen. Carlos R. Cisneros
Rep. Anna M. Crook
Sen. Clinton D. Harden, Jr.
Sen. Timothy Z. Jennings, Senate President Pro Tempore
Sen. Timothy M. Keller (11/21)
Rep. Ben Lujan, Speaker of the House
Rep. Rodolpho "Rudy" S. Martinez (11/22)
Sen. Howie C. Morales (11/21)
Rep. Henry Kiki Saavedra
Sen. John Arthur Smith
Rep. Thomas C. Taylor
Rep. Jim R. Trujillo
Rep. Bob Wooley

**Absent**
Rep. Donald E. Bratton
Sen. Gay G. Kernan

**Designees**
Rep. Roberto "Bobby" J. Gonzales (11/21)
Sen. Phil A. Griego
Sen. Nancy Rodriguez

Sen. Rod Adair
Rep. Ray Begaye
Sen. William F. Burt
Rep. Zachary J. Cook
Rep. Brian F. Egolf, Jr.
Rep. Thomas A. Garcia
Sen. Eric G. Griego
Rep. Sandra D. Jeff
Rep. Antonio Lujan
Rep. Antonio "Moe" Maestas
Sen. George K. Munoz
Sen. Steven P. Neville

Rep. Debbie A. Rodella
Sen. Bernadette M. Sanchez
Sen. John M. Sapien
Sen. William E. Sharer
Rep. James R.J. Strickler
Rep. Don L. Tripp
Rep. Luciano "Lucky" Varela
Sen. Peter Wirth

**Guest Legislators**
Rep. Miguel P. Garcia (11/22)
Rep. Bill B. O'Neill

(Attendance dates are noted for members not present for the entire meeting.)

**Staff**
Pam Ray, Staff Attorney, Legislative Council Service (LCS)
Ric Gaudet, LCS
Damian Lara, Staff Attorney, LCS
Pam Stokes, Staff Attorney, LCS

**Guests**
The guest list is in the meeting file.

**Handouts**
Handouts and other written testimony are in the meeting file.

**Monday, November 21**

**Transportation Reinvestment Zone Act**

Jim O'Neill, tax consultant, David Buchholtz, attorney, and Paul Silverman, vice chair, Greater Albuquerque Chamber of Commerce, presented proposed legislation that would allow municipalities and counties to form transportation reinvestment zones (TRZs) using a financing mechanism similar to tax increment development districts (TIDDs). Mr. Silverman said that he was recently the developer of a real estate project in El Paso, Texas, which is the home of the United States Army's Fort Bliss. The Army decided to make the base much larger and has committed to spending several billion dollars in the area. The city was asked to improve its transportation infrastructure to accommodate the development, and it formed a transportation redevelopment district to finance $1.1 billion in improvements. The infrastructure improvements are being paid by bonds financed by future sales tax increments above the current tax base. Some areas in New Mexico could benefit from such a financing package, which would not affect the current revenue stream going to state and local governments. For example, Albuquerque could form a TRZ around the Paseo del Norte and Interstate 25 interchange to provide financing for a better interchange. The improvements in the infrastructure would stimulate new commercial development in the area, which would in turn generate more tax revenue. A portion of the tax increment would be used to pay off the bonds issued to build the improvements.

Mr. Buchholtz said that the proposed bill is modeled after current New Mexico statute allowing the creation of TIDDs, with some important differences. TRZs would not have a private sector component to drive development; rather, TRZs would be a financing tool for local governments. The governing body of the district would be the same body that governs the local government, instead of being a separate entity. The tax increments would only apply to gross receipts taxes (GRT) and not to property taxes. Finally, the legislature would have to approve any bond issuance greater than $10 million.

Mr. O'Neill said that tax increment financing only works if new economic activity is created by the infrastructure improvements. If not, the bonds issued to pay for the improvements would be worthless. A TRZ could be a component of a local government's overall master plan for an area.

Questions and comments from committee members included the following:

- Is the mayor of Albuquerque in favor of the legislation? Mr. Silverman said that there have been several meetings with the mayor on this issue, and the mayor is interested in the possibilities of TRZ financing.

- The panel was asked to describe how TRZ financing could work for the financing of the Paseo del Norte and Interstate 25 interchange. Mr. Buchholtz said that the boundaries of the district would need to be designed to maximize the tax increment generated. Existing areas could be slated for redevelopment to a better economic use, including shopping centers and hotel facilities that would locate in the area based on the better transportation system. Taxes in the district would not increase; instead, a portion of the new tax revenue generated in the district would be used to pay for the improvements. Realistically, a TRZ could finance a portion of the Paseo del Norte project, but probably would not pay for the entire cost.

- Would a local government lose money from the creation of a TRZ? Mr. Buchholtz said that if existing businesses relocated to the TRZ, the local government could lose some revenue. However, the creation of a TRZ will also make the overall tax base in the local government larger, which means more total tax revenue generated.

- How would a TRZ interact with an extraterritorial planning zone? Mr. Silverman said that a TRZ is really just a financing tool; all existing planning and approval processes would still need to be performed.

- Since TIDDs and TRZs are methods of bonding against future GRT revenue, what would be the impact on those bonds if the state were to address the pyramiding nature of the

GRT or to eliminate the "hold harmless" distributions to municipalities and counties from food and medical deductions? Mr. O'Neill said that if the legislature desires to reform the pyramiding of the GRT, there will be resistance from local governments. Mr. Buchholtz said that bond covenants merely require that the bonds be paid, and if the revenue stream to pay the bonds is changed, the legislature can also change how the bonds are paid.

- The Greater Albuquerque Chamber of Commerce should support the local option of imposing the GRT on gasoline, which would provide a much better revenue stream for financing transportation projects than bonding against future potential increases in tax revenue. The gasoline tax of $.17 per gallon has not changed in nearly 20 years and is only worth one-third of its previous value due to the effects of inflation. Mr. Silverman said that he will approach the chamber with that proposal.

- Is the Martinez administration interested in enacting a TRZ law? Mr. O'Neill said that the Greater Albuquerque Chamber of Commerce is working on setting up a meeting with the governor to discuss the issue.

**GRT Deduction for Dialysis Services**

Scott Mickelson and Albert Babbitt, State Tax Services, LLC, and Roman Maes, lobbyist for State Tax Services, presented to the committee proposed legislation allowing for a deduction from gross receipts for the payment for services rendered by dialysis facilities. Currently, nonprofit dialysis providers are exempt from the GRT. The majority of dialysis services are provided to Medicare recipients, and the federal reimbursement rate for those services does not cover the actual costs of the services. The imposition of the GRT on for-profit providers makes the economic equation more difficult.

Dialysis services are provided to patients who have reached Stage 5 of chronic kidney disease. Patients need to have their blood filtered at a dialysis clinic every two days for the rest of their lives or until they receive a kidney transplant. Many patients are forced to drive many miles to have dialysis services. There are 32 non-hospital dialysis facilities in the state. Twelve of them are nonprofit facilities, which enjoy a seven percent competitive advantage over the remaining for-profit facilities.

Questions and comments from committee members included the following:

- This legislation was unanimously passed in the senate in the 2011 regular legislative session, but time ran out in the house of representatives before it could be acted on. Dialysis services are similar to other services that are not subject to the GRT, and it was most likely an oversight that dialysis services were not listed in the deduction section. The total fiscal impact to state and local governments is estimated at $600,000.

- What percent of dialysis patients are in the Medicare program? Mr. Mickelson said that 75 percent of the state's dialysis patients are covered by Medicare, five percent by Medicaid and

20 percent by commercial insurance providers.

- The legislature should consider eliminating health care taxing disparities and have one flat tax for all medical services. Any excess revenue generated from that tax would be dedicated toward the state's share of the Medicaid program.

- There are big problems with the quality of dialysis care in areas of the state. The for-profit hospital in Roswell decided not to provide dialysis services any longer, which has put a major hardship on patients needing those services.

- If the GRT deduction is granted, will the for-profit dialysis industry commit to opening more clinics in rural areas? For example, dialysis patients in Tucumcari are forced to drive to Las Vegas to receive care. Mr. Babbitt said that the industry wants to expand services in the state, and the tax deduction will help with that effort.

- Why don't all hospitals provide dialysis services? Mr. Babbitt said that Medicare reimbursements do not cover the cost of the services.

**County Education GRT Extension**

Senator Cisneros, Representative Gonzales and John Archuleta, senior vice president, George K. Baum & Company, presented to the committee proposed legislation to extend the county local option GRT for educational purposes an additional 10 years. Senator Cisneros said that the legislature passed a law in 2001 allowing counties to impose a county education GRT at the rate of one-half percent of gross receipts. The tax has been in force in Taos County for several years, but its authority is due to expire in 2012. The revenue from the tax is dedicated for public school and post-secondary educational institution capital projects. Charter schools also receive a portion of the revenue, based on their enrollment.

Mr. Archuleta said that the tax generates approximately $3 million annually. Over $25 million in bonds have been issued in the past 10 years. The recipients of the funding are the Taos Municipal, Questa Independent and Penasco Independent school districts and the Taos Branch of the University of New Mexico (UNM).

Questions and comments from committee members included the following:

- Can the revenue raised from the tax be used as a local matching source for the purposes of funding by the Public School Capital Outlay Council? Representative Gonzales said that the tax revenue can be used as a school district's local share.

- Which entity oversees the distribution of and accounting for the revenue? Mr. Archuleta said that the school districts and university have entered into a joint powers agreement. Taos County is the entity that sells the bonds and manages the money, however.

**Delinquent Property Tax Collections**

Representative Gonzales, Frank Dailey, real estate agent, Lota Realty Taos, and Julia Armstrong, attorney, Armstrong & Armstrong, PC, presented to the committee proposed legislation allowing counties to collect and foreclose on properties that are delinquent in their property taxes. Mr. Dailey related a story about the process he went through to contact any heirs of a landowner in Mora County who had died several years earlier. The property taxes on the property were delinquent, but the state had taken no action to foreclose on the property. The property was finally auctioned at the Mora County courthouse, but only after a lengthy and laborious process. There are more than 80,000 properties in New Mexico with delinquent property taxes, which translates to a huge amount of money owed to counties and other property tax entities.

Ms. Armstrong said that, currently, the Property Tax Division (PTD) of the Taxation and Revenue Department (TRD) is responsible for collecting delinquent property taxes and eventually foreclosing on properties. There is insufficient due process established in current statutes, and New Mexico court decisions have left much ambiguity in what due diligence the state needs to perform to ensure that property owners are aware of pending property sales. The proposed bill would establish judicial due process for properties to be sold, which will ensure that property owners' rights are respected, while at the same time providing a more efficient mechanism for properties to be sold. If a county decides to assume responsibility for collecting delinquent property taxes, it can contract with an attorney to perform those duties. The attorney is allowed to collect up to an additional 30 percent of the value of the taxes due.

Questions and comments from committee members included the following:

- Many of the 80,000 properties with delinquent tax bills are low-value subdivisions scattered across the state. It may not be cost-effective for counties to attempt to collect property taxes or foreclose on these properties.

- What is the current process of dealing with delinquent property taxes? Ms. Armstrong said that after property taxes are delinquent for two years, county treasurers send delinquent property tax notices to the taxpayer informing the taxpayer that taxes must be paid within one year or the property will be listed on the delinquent property tax list submitted to the PTD for collection, foreclosure and sale. The PTD has the ability to foreclose on a property immediately, but rarely does so, due to staffing and due process concerns. However, after 10 years of a property being on the delinquent list, the state loses the ability to collect taxes due on the property that are more than 10 years delinquent.

- The provision in the bill draft that allows for an extra 30 percent fee to be added to a property tax bill once a county assumes responsibility for collecting taxes is troubling. Ms. Armstrong said that the intention of the bill is to allow counties to collect delinquent property taxes while providing better protections for property owners.

- Does current law allow for the right of redemption once a property has been sold? Ms. Armstrong said that the only recourse of a person whose property has been sold for delinquent taxes is to contest the legitimacy of the sale. The person has no right to agree to pay the taxes and penalties due after a sale has been performed.

- The PTD currently has many properties with delinquent taxes, but does not issue delinquency notices very often. How would the proposed legislation change the process? Ms. Armstrong said that counties with high property values will see the value of collecting delinquent property taxes. The added judicial component in the process will provide a clear method for pursuing foreclosures if the taxes are not paid.

- Adding a 30 percent fee to delinquent property taxes will hurt property owners.

**High-Wage Jobs Tax Credit Wage Requirements**

Ms. Ray presented a proposed bill to clarify and make changes to the high-wage jobs tax credit. The bill is a combination of Senate Bill 27 of the recent special session and a new proposal to increase the threshold wage levels to qualify for the credit. The legislation would clarify that the definition of "wages", used to determine whether an employer qualifies for the credit, includes the cost of benefits paid for an employee. It also provides a time limit for employers to claim the credit and provides limitations on the granting of the credit for jobs created by company acquisitions and for private sector jobs replacing public sector jobs. The bill additionally sets wage levels of $65,000 annually in urban areas and $40,000 annually in rural areas in order to qualify for the credit.

Questions and comments from committee members included the following:

- The high-wage jobs tax credit should be defined rather narrowly to avoid the undesirable situation of providing a tax credit for jobs that are actually low-wage.

- The legislature should consider establishing a two-year residency requirement for employees in order for employers to qualify for the credit.

- Do employers in Anthony, New Mexico, receive a credit for employees who live in nearby El Paso, Texas? Ms. Ray said that current law allows for the credit to be given only for employees who are New Mexico residents.

**Regional Perspective Economic Development Incentives**

Fred Mondragon, Mondragon Consulting, and former secretary of economic development, gave a presentation to the committee comparing business recruitment incentives in the surrounding states. Mr. Mondragon compared business incentives in Arizona, Colorado, Oklahoma, Texas and Utah and gave detailed descriptions of the incentives in each state. While New Mexico has a long list of incentives, Mr. Mondragon said that the state should also consider establishing a "closing" fund that would enable the state to provide additional incentives to companies in the final decision-making process. Texas, Arizona and Oklahoma have closing funds. The state may also benefit if it were able to provide matching funds to counties in their business recruitment activities.

Questions and comments from committee members included the following:

- Why is Texas performing so much better than New Mexico economically? Mr. Mondragon said that there are several reasons why Texas' economy has grown in the past few years, including the aggressive incentive programs that include cash incentives for companies to locate to the state and the fact that Texas does not have an income tax. Texas also has many more natural resources than New Mexico.

- Do any of the surrounding states have incentives designed to encourage veteran-owned businesses? Mr. Mondragon said that he is not aware of any veteran incentives in other states.

- What is the best recruitment tool the state is using, and what else can the state do to bring in new business? Mr. Mondragon said that the job training incentive program is the most important tool New Mexico has to recruit and retain businesses. Besides establishing a modest closing fund, the state should not tinker too much with existing incentives. He expressed reservations about potential modifications to the high-wage jobs tax credit.

- The state's institutions of higher education have been resistant for decades to establishing short-term certification programs to train workers in needed skills. Another problem is that educational institutions have been cutting successful programs at branch campuses because of budgetary cuts. The nursing program at the Taos Branch of UNM, which provided immediately employable nurses after graduation, was recently canceled.

- New Mexico needs a statewide coordinated effort to plan for job training and it needs to improve its educational system.

**Capital Investment GRT Abatement**

Senator Keller presented to the committee a proposed bill that would expand the investment credit to apply to certain capital investments in a New Mexico business. The credit would be restructured so that a business making qualifying capital investments could be exempted from paying GRT for up to five years. After the full amount of the credit has been granted, the business would pay back the amount of the credit granted to the state. This mechanism would better match a business' investment period with the later revenue-generating period.

**State Graduate Employment Tax Credit Act**

Senator Keller presented a proposed bill to the committee that would grant an income tax or corporate income tax credit of $300 to a business for every full-time employee hired who recently graduated from one of the state's four-year institutions of higher education.

Questions and comments from committee members included the following:

- A $300 tax credit to hire a full-time employee is not much of an incentive. Senator Keller said that he will investigate the costs associated with making the credit amount larger.

Alison Block from the Lobbying Committee of UNM Graduate and Professional Student Association said that the association supports the proposal.

**<u>Tuesday, November 22</u>**

**Amending the Community Development Incentive Act to Allow Financing of Solar Electric Generation**

Rick Gilliam, vice president, Western Governmental Affairs, SunEdison, and Drew Setter, lobbyist for SunEdison, presented to the committee a bill proposal that would allow solar electric generation companies using sale-leaseback financing arrangements to take advantage of the incentives provided in the Community Development Incentive Act. That act allows a local government to exempt from property tax commercial personal property of a new business facility. SunEdison was granted exemptions by Lea and Dona Ana counties in 2010 for its two large solar electric generating stations. However, SunEdison and most solar electric companies use a financing mechanism in which a company sells the equipment in the system to an investor and then leases back the system from the investor over several years. The structure of this arrangement has meant that the investors in the equipment are not able to take advantage of the property tax exemption. The proposed legislation allows sale-leaseback arrangements with a solar-electric provider to satisfy the requirements for having a property tax exemption granted.

Questions and comments from committee members included the following:

- Does SunEdison also receive property tax abatements from industrial revenue bonds (IRBs) and GRT exemptions? Mr. Gilliam said that the company receives an exemption from the GRT for the cost of the equipment in the facilities. He said that he does not think the company was granted an IRB for its projects. He said that he will confirm that information for the committee.

- SunEdison representatives were asked to provide information on the taxes the company pays in New Mexico and what kinds of business incentives it has received.

- The language in the proposed bill only allows for sale-leaseback financing for solar electric providers to qualify for the property tax exemption. Perhaps the language should be expanded to allow other industries that use similar financing scenarios.

**Health Care Tax Expenditures**

Jack Evans, program evaluator, Legislative Finance Committee (LFC), and Maria Griego, program evaluator, LFC, gave a report to the committee on the impact of financing health care through tax code policy. Mr. Evans presented the preliminary findings of the study, including:

- New Mexico's health care tax expenditures account for about $290 million in foregone revenue, but their true impact is difficult to measure. Health care tax expenditures lack a clearly defined purpose, adequate reporting requirements from taxpayers and measurable outcomes. The TRD does not systematically collect data on existing tax expenditures, and foregone revenue associated with tax expenditures is reported inconsistently. The state has little information regarding the interaction of health care tax expenditures with other subsidies, and since they are open-ended, it is difficult to gauge their financial impact with certainty.

- While the rural health care practitioner tax credit has a clear goal and is being used by practitioners, its true impact is elusive. The tax credit has a clearly stated goal, but evidence that the goal is being achieved is anecdotal. In practice, the tax credit is understood as a retention program, rather than as a recruitment tool. The financial impact to the state has been larger than originally estimated, currently averaging $6.5 million annually. There is no accurate mechanism to count the number of rural health care practitioners in the state. Other methods to recruit and retain health care professionals may be more effective than the tax credit.

- The GRT credit for hospitals allows a for-profit hospital to claim a credit against five percent of its gross receipts tax liability starting in fiscal year 2012, an estimated $12.5 million loss to the state.

- The preemption from paying all other taxes except the premium tax for insurance companies results in a large amount of foregone revenue, with unclear policy goals for that expenditure. The lost GRT revenue from that expenditure had a fiscal year 2010 cost to the state of $83.6 million. Many services provided by insurers are also excluded from the premium tax. Those services would otherwise be subject to the GRT but for the preemption.

- The New Mexico Medical Insurance Pool deduction from the premium tax accounted for $49.6 million in foregone revenue in fiscal year 2010. This deduction will no longer be necessary after federal health care laws take effect in 2014. Currently, life and health insurance providers pay an assessment fee into the pool, which can be deducted in part from the premium tax due.

- The GRT deduction for medical service providers and the associated "hold harmless" distribution to local governments accounted for $82 million in foregone revenue to the state. The deduction does not have a clearly defined purpose, and it cannot be effectively evaluated.

The LFC made several recommendations to improve the effectiveness of health care tax expenditures, including developing a more detailed reporting system so the TRD can collect the data it needs to evaluate tax expenditures; implementing caps and sunset provisions for some expenditures; changing the rural health care practitioner tax credit into a program that instead provides grants and subsidies to recruit practitioners; and phasing out the hold harmless provisions of the medical service deductions from the GRT.

Questions and comments from committee members included the following:

- How does the definition of "rural" get established? The state should provide tax incentives only to areas that are medically underserved. Jerry Harrison, acting director, New Mexico Health Policy Commission, said that the federal government recognizes 13 different definitions for "rural area". The areas are determined geographically by zip code. The fact that an area may be medically underserved is not a criterion for determining if an area is rural.

- Santa Fe County has reduced funding from its sole community provider funds to Christus St. Vincent Regional Medical Center, which has resulted in a hardship for the hospital. Mr. Evans said that the LFC is currently studying the effectiveness of county-supported health care.

- Pharmacies are not being paid by managed contract providers that have contracts with the state for services for several months. Ms. Griego said that the LFC has accountability concerns about some of the state's health care contracts.

- The state should consider establishing a statewide tax to pay for indigent care, rather than the current structure of each county imposing taxes for that care.

**Health Care Expenditure Sunset Provisions and Other Draft Ideas**

Ms. Ray presented several proposed bill drafts for the committee's possible endorsement in December.

<u>Review and Delayed Repeal of Health Care Tax Expenditures.</u> The proposed bill provides for the review and sunsetting of health care tax expenditures. Certain tax expenditures would be repealed in 2020, unless the legislature extends the provisions. The bill provides for the review of the deduction from gross receipts of medical services, the rural health care practitioner tax credit, the deduction from gross receipts for hospitals, the credit against the GRT for certain hospitals and the preemption from all other taxes except the premium tax for health insurers.

<u>Phasing Out of the Food and Medical Hold Harmless Distributions.</u> The proposed bill eliminates the distributions made to municipalities and counties to compensate them for revenue lost by the enactment of deductions from gross receipts for food and medical services. The distributions would be eliminated over a 15-year period.

<u>Cigarette Tax Stamps Clarification.</u> The proposed bill, which has already been endorsed by the interim Tobacco Settlement Revenue Oversight Committee, clarifies that cigarettes sold with tax-credit stamps are "units sold" for the purposes of the Master Settlement Agreement with major tobacco manufacturers. The legislation would put in statute the contention that non-participating manufacturers are liable to pay into an escrow account for each cigarette sold on

tribal land.

Tax Exemption for Plug-in Electric Drive Vehicles. The proposed bill would provide a three-year exemption from the motor vehicle excise tax for qualified plug-in electric vehicles.

The committee directed staff to send a letter to Governor Martinez inviting her staff to present details of the administration's tax reform package at the committee's December meeting. If possible, fiscal impact reports for the legislation should be provided to the committee.

There being no further business, the committee adjourned at 12:07 p.m.